

15. J. J.

A present from the Author

A

Francis Hargrave

13. August 1794.

CONCISE TREATISE

ON

The Courts of Law

OF THE

CITY OF LONDON.

884. K. 29.

BY

THOMAS EMERSON,

AN ATTORNEY OF THE COURT OF KING'S BENCH,

AND

ONE OF THE FOUR ATTORNIES OF THE LORD
MAYOR'S COURT.

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CONCISE TREATISE

ON

THE COURTS OF LAW

OF THE

CITY OF LONDON



ADVERTISEMENT.

ALTHOUGH there are extant a variety of treatises on the customs and privileges of the City of *London*, yet all of them, so far as they relate to the *JUDICIAL FRANCHISE* of that city, exercised through her *courts of law of ordinary jurisdiction*, being greatly defective, not only in substance, but in method and

arrangement, a just knowledge thereof is difficult to be attained.

The Editor, from a hope that his endeavours might tend, in some measure, to facilitate a true understanding of this most important branch of the privileges of the City, was induced to attempt the following short treatise, wherein he has set forth, in the order and method which the subject seems to require, and with as much brevity as the same would admit of, the *origin, nature, and constitution*, of those

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ADVERTISEMENT.

different courts, their *order* or *æconomy*, as to judges, officers, and the times appointed for the administration of justice therein, the *objects of the jurisdiction* of each court, with some *general observations* on their proceedings and practice; from whence, the Editor presumes, may more easily be attained a true and comprehensive knowledge of the nature and importance of the ordinary part of the City's judicial franchise than from any other treatise extant upon the subject.

A 3

Another

Another consideration, and which operated as a further inducement to this publication, is the Editor's conviction, that the powers vested in the City courts, for recovery, *by action, or suit, according to the course of the common law*, of debts contracted, or a compensation for injuries sustained within the City and liberties, are not generally known: from the following treatise it will appear, that by such mode of proceeding in some of those courts, the above
pur-

ADVERTISEMENT.

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purposes may be effected, expeditiously, and with ease to the suitor.

Exclusive of what is here said upon the subject, the Editor has prepared for publication a separate treatise on the proceeding by that custom, appertaining to the City of London, so beneficial to the public, called the custom of *Foreign Attachment*, wherein is collected and stated all the law to be found under that head, with the cases decided thereupon,

as well in the Courts of Westminster Hall, as in the City courts, down to the present time; whereto is added, *the practice of the Mayor's Court* upon such customary proceeding, as also in actions and suits in general, cognizable in that court, as well on the law as equity side thereof; and which it was intended should have formed a part of the present work; but, such a performance appearing more calculated for the use of the profession than for general reading, he was advised to
make

make the matters therein contained the subject of a separate publication; and he intends to give the same to the public, accompanied with the matter after-mentioned, so soon as his professional avocations will admit.

Concerning, in some respects, the business of the Mayor's Court, inasmuch as *The Seal of the Office of Mayoralty*, commonly called the City Seal *, (frequently made

* See hereafter, for the mode of procuring the City Seal.

use of in the matters to which the same relate), is there affixed; the Editor has compiled from the different codes of laws of the several *West India islands*, belonging to this kingdom, and other the British colonies and plantations in *America*, (meant to form a part of his intended publication,) such parts of those laws as relate to *conveying, devising, and charging*, estates of different descriptions in such islands and places, as also to *cutting off* and *barring* intails, and reversions,
and

ADVERTISEMENT.

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and remainders expectant thereon, and for *extinguishing* or *barring* rights of dower in any such estates, *by persons residing in this kingdom* ; together with such parts thereof as concern the *registry* of deeds, wills, and other the instruments, whereby those ends are accomplished : wherein will be found directions for authenticating the execution of such deeds, &c. in this country ; the time allowed for registering the same, in the respective islands or places whereto they relate ; with the penalties

penalties and disabilities attendant upon a neglect in not making such registry in due time.

The Editor has likewise extracted from the above-mentioned laws, as also from the laws of this kingdom, (which will make a further part of his intended work,) such parts thereof as contain *directions for authentication of proofs* in this country, so as to make them evidence in any of the before-mentioned islands, or places, to be used for the recovery of debts, &c. there; together with several
judicial

ADVERTISEMENT.

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judicial determinations thereupon.

And he has added thereto a collection of the most approved precedents of conveyances, powers of attorney, affidavits, certificates, &c. &c. &c. used in the before-mentioned cases.

*Lord Mayor's Court Office,
Royal Exchange ;
and
Staple Inn,
May 12, 1794.*

IN-

judicial determination of the question
And it has been held that a
section of the road is not a
subject of controversy, but
an object of public utility,
and that the question of its
location is not a matter of
private right.

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INTRODUCTION.

AMONG the many valuable privileges appertaining to the City of *London* by prescriptive right, we look upon the *judicial franchise* of that City as worthy of particular attention. This franchise, as exercised through the City courts of law, of *ordinary jurisdiction*, is the subject of the following sheets.

The

The City's courts, which may be said to be courts of ordinary jurisdiction, are four in number; namely, *the Court of Hustings, the Mayor's Court, and the two Sheriffs' Courts*, eachwhereof hath jurisdiction throughout the whole City, so far as relates to the matters respectively cognizable therein; but those courts differ materially as to the objects of their jurisdiction; they vary too as to the mode of holding pleas, some of them possessing that power by virtue of an original right which is inherent in them; to others it
is

INTRODUCTION.

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is given by the King's writ issuing out of Chancery. Those courts are likewise of different degrees of pre-eminence, some of them being superior to, and exercising a controul over the others, in some cases before, in others after judgement, of all which matters we shall treat under the proper heads to which they belong; beginning our enquiries with the Court of *Hustings*, that court being first in point of rank.

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OF

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 to which they belong: beginning
 our inquiries with the Chancery
 courts, that court being first
 point of rank.

OF THE COURT OF *HUSTINGS*.

THIS court is of Saxon origin. Origin.
 Its name is compounded of the Name.
 Saxon words *Dus*, a house, and *ding*,
 a thing, written and pronounced *Hust-*
ing, (i. e. *Domus Causarum*, or *the House*
of Causes) and is the name that was
 given to the house or place where
 this court was originally held *. Constitu-
tion.

* By the ancient Saxon constitution, the *political part* of the municipal government of the city of London, was vested in the *Folkmote*, or general assembly of citizens; and the *judicial part* thereof, in the *Husting*, or House of Causes. Through the latter (the *Husting*) is still exercised a part of the judicial franchise of this city, but the *Folkmote* is not now known but by name; however, we think the citizens of London have no cause to regret the change, which has given to them a constitution and government, so nearly allied, in essence and in form, to the glorious constitution and government of the country at large, the pride of this, and envy of all surrounding nations.

Court of Hustings.

Pre-emi-
nence.
Antiquity.

Where
held.

Its divi-
sion into
two courts.

Title
of the
Husting of
pleas of
land.

constitution of this court ariseth out of custom, and it is a court of record from long usage, and the same is the supreme as well as the most antient court of law belonging to this city, and is now held in that part of Guildhall to which has been given the name of *The Hustings*.

In the Hustings there are two courts, held distinctly, and having different jurisdictions, one whereof is called, *The Husting of Pleas of Land*, and the other called *The Husting of Common Pleas*; they are respectively intituled as follow.

“PLEAS OF LAND, holden in the
“Husting in the Guildhall, London,
“on Monday *the* Feast of, or *next*
“*before*, or *next after*, the feast of,”
(*any feast, whether observed by the*
Church of England, or the Church
of Rome, happening upon the Monday
on

Court of Hustings.

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on which the court is said to be held, or between that day and the Monday next preceding or succeeding it.)

“COMMON PLEAS holden in the
“Husting, in the Guildhall, London,
“on Monday, &c. (as before).

Title
of the Hust-
ing of
Common
Pleas.

Under these titles those courts are now
held alternately, one of them each week,
throughout the year, except as here-
inafter mentioned * ; but the Husting
of Pleas of Land, and Common Pleas,
differing only as to the matters cogniz-
able therein, in the subsequent part of
our treatise, they will in every other
respect, be considered as forming only
one court.

When
held.

In the course of our enquiries into
the origin of the court of Hustings, we
have not been able to meet with any

Observa-
tions on
its origin,
antient
form and
jurisdic-
tion, &c.

* See p. 13, 14, and 15.

Court of Husting.

monuments of antiquity, by which the same can be ascertained, with exact precision; however, we have no doubt, but that it was established during the Saxon æra. The first mention we find of this court, in any history or law tract, is, in the laws of King *Edward* the Confessor, wherein it is directed, that the same should be held every week on *Monday*, at the *Hustings* in Guildhall; but we conceive the institution of this court to have been long before the making of these laws.

Of the jurisdiction of this court, and the mode of administering justice therein, at the time of its first establishment, no clear written account is to be met with. Many circumstances concur to shew, that, for a considerable length of time after the same was first instituted, it was the only court
of

Court of Hustings.

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of law existing in the city of London, that the jurisdiction thereof, during that period, was of a nature somewhat similar to that originally exercised by the County Courts and Tourns in the different counties throughout England, and that the principal officers or magistrates of the city, by whatever name they were then known, whether by that of *Portreeve*, *Aldermen*, and *Sheriffs*; *Provost*, *Aldermen*, and *Bailiffs*; or *Mayor*, *Aldermen*, and *Sheriffs*; as at present; were then, as they are now, the judges of the Court.

It seems probable, that this antient jurisdiction continued until an increase of population and commerce rendered it inconvenient to transact the whole judicial business arising in the city in one court; therefore, the least

momentous part thereof, (as it was considered at that time), actions, merely personal, were separated therefrom, and the Mayor's and Sheriffs' Courts were established in order to take cognizance thereof; this Court still retaining an exclusive jurisdiction over all actions, real and mixed, then in use, as also an appellant jurisdiction in personal action after judgement given therein in the Sheriffs' Courts, and which it still possesses.

We have not met with any authority that will intitle us to say with certainty at what time this regulation took place. From the oldest records of the court now extant, which bear date in the reign of *Edward* the Second, it appears, that this Court had at that time assumed its present jurisdiction, with respect to the matters cognizable therein, but we think

think the regulation was of an earlier date. If we might be permitted to exercise our own opinion upon this subject, we should fix this change to have been made in the reign of King *John*, in imitation of, and about the time of, the division of the *Aula Regis* into different judicatures; or in the reign of *Edward* the First, when, in pursuance of the example set by *John*, the whole frame of the judicial polity of this country was new modelled.

The court of Hustings is now held before the *Lord Mayor, Aldermen,* and *Sheriffs*, who are the judges thereof, and when any point of law is to be argued, or matter of fact to be tried, the *Recorder* sits with them, to assist them therein, and to pronounce the judgements of the Court. In order to constitute a Court for the dispatch of

Judges.

What
number
constitute
a Court.

Court of Hustings.

of business, it is not necessary that all the judges thereof should be present; a Court may be held by the *Lord Mayor*, and *the two Sheriffs*, or by *six Aldermen*, and all proceedings had at a Court so held are as effectual as if all the Judges had been present*.

Officers.

There are several subordinate officers belonging to this Court, as a *Register*, *Clerk of the Hustings* or *Inrollments*, and a *Cryer*: the Town Clerk, for

* By an act of the Court of Common Council made the twenty-ninth day of *April*, 26th Eliz. it is provided, that in case of sickness of the Lord Mayor, and other urgent occasions, the Court of Hustings may be holden and kept before *any one Alderman that hath born the office of Mayoralty, and the Sheriffs, or one of them.*

This act appears to be still in force; but upon enquiry we do not find it has ever been acted under.

Court of Hustings.

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the time being, is register, whose business it is, under the direction of the judges, to superintend the proceedings of the Court, and to see that the same are properly entered upon the records thereof, of which he has the custody.

The office of *Clerk of the Hustings*, or *Inrollments*, appertains to the second attorney of the Mayor's Court, by whom all deeds and wills are inrolled.

Clerk of
the Hust-
ings or In-
rollments

The office of *Cryer* is performed by the City's Common Cryer, whose duty it is to give notice to the Judges of the sittings of the Court, and to open and adjourn the same.

The Sheriffs act here not only as Judges, but also as the *Executive Officers*.

Executive
Officers.

Officers

Court of Hustings.

Officers of the Court ; all the process thereof being made out in the name of the *Mayor, &c.* and directed to the *Sheriffs*, and executed by them or their officers.

Counsel.

The *Counsel*, or Advocates, practising in this Court, as assistants to the parties litigant, are the four City Pleaders. The *Attorneys* of this Court are the same who are Attorneys of the Mayor's Court. Their admission as Attorneys of that Court gives to them the exclusive privilege of practising here.

Dies juridici.

In the Court of Hustings, as in every other Court of Law, there are certain appointed days or times for the administration of justice therein, and which the Courts of Westminster Hall call their Terms ; but neither this,

Court of Hustings.

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nor any other of the City Courts, of ordinary jurisdiction, are in any wise regulated, or effected, by the terms observed in Westminster Hall.

In the history of the jurisprudence of this country, we find, that, at an early period, a law was made for regulating the sittings of this Court: In the laws of King *Edward* the Confessor, as before observed, it is directed that the same should sit and be held every week, on Monday. In several of the charters granted to the city of London, are also to be found directions confining the sittings of this court to a particular day, viz. the Monday, in each week.

This court may now be said to sit, or be held, *weekly*; and all the proceedings

Court of Hustings.

ceedings thereof are still intituled as if had upon the Monday *, but although they are so intituled, and the Court, in point of law, is supposed to be held upon that day, yet, for a great number of years past, it has been, and is now actually, held upon the day following, namely, *Tuesday*, therefore, the GENERAL *dies juridici* of this court, i. e. the days whereon it sits, or is held, for the dispatch of business are now,

The TUESDAY in each week.

Dies non
juridici.

We have stated Tuesdays to be the GENERAL *dies juridici* of this court, because there are *particular Tuesdays*, in a year, and *certain feast days*, which, if they happen to fall upon a *Tuesday*, it cannot be held, and which we shall denominate the *dies non juridici* of the Court of Hustings. They are as follow:

* See p. 2, 3.

Particular

Particular Tuesdays in each year, upon which a court cannot be held, are,

— *Shrove* **TUESDAY**.

TUESDAY in the week next before *Passion* week.

TUESDAY in *Passion* week.

TUESDAY in *Easter* week.

TUESDAY in *Rogation* week.

TUESDAY in *Whitsun* week.

TUESDAYS happening on or between the 1st of *August* and

The Feast of *Saint Michael* and all *Angels* (*September* 29).

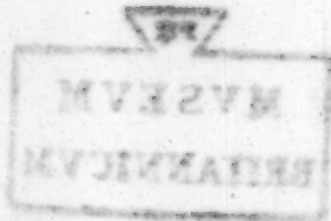
} Summer vacation.

TUESDAYS happening on or between *O Sapientia* (*December* 16) and

The Feast of the *Epiphany* (*January* 6).

} Christ-mas Vacation.

FEASTS



FEASTS *, which, if they happen upon a *Tuesday* †, a Court cannot be held.

The Conversion of Saint *Paul*,—
January 25.

* These are all *immovable* feasts, and always happen upon the day of the month respectively set opposite to them.

† Antecedent to the 4th of Edward III. if any of these feast days happened either on the *Monday* or *Tuesday*, a court was not held during that week, because the court, as at present, was *intituled*, and in law was supposed to be held upon the former day, and was in fact, as at this time, held upon the latter. This was found greatly to delay the proceedings of the Court, therefore, by an act of Common Council, made the 9th of October, the 4th of Edward III. (A.D. 1331) it was directed that this court should be held every *Tuesday* not being a holiday or in the vacations, notwithstanding the *Monday* next before should be a holiday, and which rule hath been observed ever since.

Pu-



Court of Husting.

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Purification of the *Virgin Mary*,—
February 2.

Saint *Matthias*,—*February 24.*

Annunciation, *Blessed Virgin Mary*
—*March 25.*

Saint *Mark*,—*April 25.*

Saints *Philip* and *James*,—*May 1.*

Saint *Barnabas*,—*June 11.*

Nativity of St. *John*, Baptist,—
June 24.

Saint *Peter*,—*June 29.*

Saint *James*.—*July 25.*

Saint *Michael*, *September 29.*

Saint *Luke*, *October 18.*

Saint *Simon* and Saint *Jude*, *Octo-*
ber 28.

All *Saints*, *November 1.*

All *Souls*, *November 2.*

Saint *Andrew*, *November 30.*

C

The

Objects of
its jurif-
diction.

The Court of Hustings, considered with reference to the other city courts, hath exclusive cognizance of all actions *real* and *mixed* (except ejectment) arising within its jurisdiction. It holds pleas of all matters cognizable therein, except *replevin* and *attaint*, not by virtue of its own inherent authority, but by writ out of Chancery. It has no jurisdiction over actions merely personal, save as above, or by way of appeal from the Sheriff's Courts.

Hitherto we have considered both the Hustling of Pleas of Land and Common Pleas, as one court, the matters of which we have already treated applying equally to both; as we are now about to observe on the objects of the jurisdiction of these courts, with respect to which they vary, we shall here consider them

them as distinct judicatures, but as there are, not only, particular matters cognizable in each, with which the other cannot intermeddle, but also some things common to both, it will be proper, for the sake of perspicuity, to arrange the objects of their jurisdiction under the three divisions, of matters cognizable in the Hustings of Pleas of Land;—matters cognizable in the Hustings of Common Pleas;—and matters common to both Courts.

1st. Of matters cognizable in the
Husting of *Pleas of Land*.

By writ of *right patent* this court holds pleas of all *real actions*, for the recovery of lands, and tenements in the city and liberties. This writ issues out of Chancery, and is directed to the *Lord Mayor and Sheriffs*, whereby

whereby the lands or tenements demanded *only* are recovered.

From the introduction of the mode of trying titles to lands and tenements by trespass and ejectment, the proceedings upon the writ of right patent are now grown almost into total disuse; therefore, it will be unnecessary to say any thing of the nature of the estates recoverable thereby, or of the proceedings thereupon, that being now more a matter of curiosity than of use, and which may be fully gratified on reference to *Blackstone's Commentaries*, *Reve's History of the English Law*, and other books of the like nature.

Common
recoveries.

By virtue of the like writ, *common recoveries* may be here suffered of lands

and tenements in the city and liberties, and the same are as effectual for *cutting off* and *barring* intails, and reversions and remainders expectant thereupon, *and every other purpose* for which recoveries are used, as if suffered in the Court of Common Pleas at Westminster.

Recoveries are suffered here in open court, and the parties count thereupon by council, in like manner as in the Court of Common Pleas at Westminster, when a recovery is there suffered by a peer; and, when completed, the proceedings thereupon are exemplified under the seal of the office of mayoralty. It is usual to inroll the deed declaring the uses of the recovery amongst the rolls of the court.

Court of Hustings.

The expence attendant upon suffering a recovery here, together with the inrollment of the deed declaring the uses thereof, is much less than the cost which would attend suffering the like recovery in the Court of Common Pleas at Westminster.

2dly. Of matters cognizable in the Hustings of *Common Pleas*.

Mixed
actions.

Dower,
Partition,
Waste, &c.

This court holds plea of all *mixed actions* except ejectment, as actions upon the writ of *dower*, *partition*, *waste*, &c. whereby not only the thing withheld or wasted, but *also* a compensation in damages, for withholding or wasting the same, is recovered. The writs upon which these actions are founded are writs *close*, but they, as well as writs *patent*, issue out of Chancery, and are directed

to

to the *Mayor* and *Sheriffs*; however, they are now seldom sued out, having given way to actions of trespass, ejectment, &c. which have been found more easy and convenient remedies in the cases wherein they were used.

Questions, with respect to taking ^{Replevin.} distresses in the city and liberties, are tried in this court in exclusion of the other city courts. A replevin is not made here, but before one of the *Sheriffs* at his *Compter*; yet, after the delivery by the Sheriff of the goods distrained to the owner, further proceedings cannot be had upon the plaint in replevin at the *Compter*; it is for that purpose removed into this Court. This removal is effected, not by a writ out of Chancery, but by a process issuing out of this Court, signed by the Lord Mayor or the Re-

C 4

corder,

Court of Hustings.

corder, called a *levetur querela*, which is had at the instance of either party. The *levetur* is directed to the Sheriff, at whose Compter the plaint was lodged, commanding him to certify the plaint, that being done, this Court becomes possessed of the cause, and may proceed to a determination thereof.

Where it is intended to remove a replevin cause into any of the courts in Westminster Hall, the plaint is first levated into this court, and being here filed of record, on a *certiorari* directed to the Mayor, Aldermen, and Sheriff, a return is made thereof, as by the writ is commanded.

Reviewing
judgments
in the
Sheriff's
Court.

This Court in its appellant jurisdiction *reviews* the judgments of the Sheriff's

Sheriff's Courts by Writ of error
issuing out of Chancery returnable
here.

The 27th of *Henry VII.* cap. xxi. *Attaint.*
gives to the party aggrieved by false
verdict, in any of the City Courts,
his remedy by bill of *attaint*, sued
here before the Mayor and six Alder-
men or more, the proceedings where-
upon are regulated by that and subse-
quent statutes; but the practice of
setting aside verdicts upon motion,
and granting new trials, has entirely
superfeded the proceeding by attaint.

All *judicial proceedings* in the be- *Proceed-*
fore-mentioned cases, being according *ings.*
to the general law of the land, they
are in *principle* the same as proceedings
in like cases in the courts at West-
minster, but the *practice* of these
courts,

Court of Hustings.

courts, in bringing such proceedings to an end, differs in some respects from the practice of the courts in Westminster Hall.

3dly. Matters common to *both courts*, viz. the *Pleas of Land* and *Common Pleas*.

Pronouncing judgments on outlawries.

All judgments *upon outlawries*, in causes where the *venue* is laid in London, are pronounced in the Court of Hustings. The proceedings in such a case are had either in the Husting of *Pleas of Land* or *Common Pleas*, which happens first after the coming of the *exigent*, or is most convenient to the parties, but having been begun in one division of the Court, the subsequent proceedings must be continued and finished there.

In

Court of Hustings.

25

In actions between party and party, where the cause thereof is transitory, and where it is apprehended that it may be necessary to outlaw the defendant, it is usual, where expedition is an object, to lay the *venue* in London, as an outlawry may be completed in the Court of Hustings in much less time than in any County Court.

Deeds *conveying* or *affecting* lands or tenements in London, or any interest therein, are inrolled either in the Hustling of *Pleas of Land*, or *Common Pleas*, the execution thereof being first acknowledged before the Mayor, or the Recorder and one Alderman, and proclamation thereof made at one of these courts.

Inroll-
ment of
deeds.

Wills

Inrollment
of wills.

Wills *devising* lands or tenements in the city and liberties, executed and attested, as by law is required, for passing real estates, may be inrolled either in the Husting of *Pleas of Land*, or *Common Pleas*, the same being first proved in open court on the oaths of two of the subscribing witnesses thereto, and proclaimed at one of these courts.

It is observable, that such inrollments may in many cases be attended with the most beneficial effects, as the ill consequences, attending accidents which may befall deeds or wills, or the death of the witnesses thereto, are thereby guarded against.

Bargains,
sales for
barring
rights of
dower, &c.

A *bargain and sale* of lands or tenements in London, executed by husband and wife, and acknowledged by

by them before the *Lord Mayor*, or the *Recorder*, and one *Alderman* (the wife being examined *separately* and apart from the husband), proclaimed and inrolled in the *Husting of Pleas of Land or Common Pleas*, is as effectual for barring a wife of dower as a fine in the Court of Common Pleas at Westminster, and answers every other purpose of a fine at Common Law.

The expence attending the inrollment of deeds and wills, and this mode of conveying the estates of feme covert, and of barring rights of dower, being inconsiderable, renders them matters deserving attention.

A judgment in the Court of *Hustings*, either of *Pleas of Land* or *Common Pleas*, and whether the same was given in a cause first instituted

Its judgments where appealed against.

in

in one of these courts, or in a cause removed there, by writ of error, from the Sheriff's Courts, is not conclusive, but the same may be examined, and, if erroneous, reversed; not, however, by any of the courts of Westminster Hall, but by an especial court or tribunal, appointed for that purpose by commission, or letters patent under the Great Seal.

The party wishing for the examination of a judgment given in this court, on petition to the *Lord Chancellor, Commissioners, or Keeper* of the Great Seal, praying the same, has a commission of errors (together with a writ of error) made out, directed to certain of the Judges of the courts of Westminster Hall, empowering them, or any two of them, to cause the record of the judgment to be brought before them

them at the *Guildhall, London*, and to examine the same, and correct the errors therein, upon which a precept issues under the hands of the Commissioners or Delegates, directed to the *Mayor and Sheriffs*, commanding them to cause to be brought before them, the Commissioners, the record of the judgment; whereupon, according to the custom of the city, after a respite of forty days, the record of the judgment is certified by the Recorder *ore tenus*, and the matters therein assigned for error being examined, the judgment given in the Court of *Hustings* is affirmed or reversed, as the case requires. The judgment of the Commissioners, or Court of Delegates, is not conclusive; for, if either party is dissatisfied therewith, by writ of error, the same is removed immediately into the *House*
of

The judgments of the Commissioners how reviewed.

Court of Huslings.

of *Peers*, for the opinion and judgment of that Court, which is the dernier resort, and from whose judgment no appeal is permitted.

OF

OF THE *MAYOR'S COURT* *.

THIS court takes the name or title Name.
by which it is generally known,

viz. "The Mayor's Court," or "Lord Mayor's Court," from the Lord Mayor being considered, in law, the first or principal judge thereof; but the strict legal title of this court is "The Court

Title.

"holden before the Mayor and Aldermen in the Chamber of the Guildhall of the City of London."

The constitution of this court, like that of the Hustings, ariseth out of

How constituted.

custom; like that too it is a Court of Record from long usage, and the same is held in the *outer Chamber* of the Guild-

Where held.

hall of this city; the place where *The Court of King's Bench* usually sits, and which is generally known by that name.

* For the origin of this court, see before, p. 7.

Rank.

The Court of Hustings, although it is the supreme court of law belonging to the city of London, hath not any controul over this court, neither before or after judgment, by writ of error, or otherwise howsoever. This court is superior to the Sheriffs' Courts, and causes instituted there may, at any time before the jury is sworn for trial thereof, be removed here, but this court cannot examine the judgments of those courts, that power, as hath before been observed, is vested in the Hustling of *Common Pleas*.

Nature.

The Mayor's Court, like the Court of Exchequer at Westminster, is of double capacity, possessing an equitable as well as a legal jurisdiction, which it exercises by a primary original authority inherent in it. It will be our business in the first place
to

to treat of the Mayor's Court at Law, reserving our enquiries, as to the Mayor's Court in equity, for separate consideration; but by the way we beg leave to observe, that whatever we shall state as relating to the law side of the court, until we come to treat of the objects of its jurisdiction, applies, as far as their respective natures will admit, equally to both courts.

The *Lord Mayor* and *Aldermen* are, Judges; in law, considered as the judges of this court, and all the proceedings thereof are intituled as if had before them, but the *Recorder* is the acting or officiating judge, and, by custom, he is invested with full authority for carrying into execution the whole judicial powers of the court.

The officer who acts more immediately under the directions of this Register.

OFFICERS.

Register.

court, in bringing its proceedings to a determination, is the *Register*, who enters all the pleadings of the parties litigant, makes out rules and orders thereupon, attends the court to receive and record its verdicts, he draws up and enters its orders and judgments, &c. and has the custody of the Records of the Court. The office of register is annexed to, or rather makes a part of, the office of *Town Clerk*, or *Common Clerk*, which is in the appointment of the Court of Common Council. The office of Register is executed by deputy.

Secondary,
or Clerk
of the
Bails.

To this court belongs an officer called The *Secondary*, or *Clerk of the Bails*, whose duty it is to take bail on all arrests, upon process issuing out of this court, and he is answerable for the sufficiency of all bail taken

by him. The senior attorney of the court is Clerk of the Bails, by virtue of his office of senior attorney.

This court has its own executive officers, for serving its process, and otherwise giving effect to its proceedings, called *Serjeants at Mace*; they are admitted to their offices by the Court of Aldermen, are six in number, and attend this court two at a time in weekly rotation. Custom, upon which the court is founded, and by which it now exists, requires, that the above duties should be performed by them, therefore their strict personal attendance upon the court, for that purpose, is absolutely necessary.

Serjeants
at Mace.

There are also belonging to this court certain Counsel or advocates, and attorneys, who act as assistants to the

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suitors;

suitors; they are admitted to their offices by the Court of Aldermen.

Counsel.

The *Counsel* are four in number, and are called the City Counsel, or Common Pleaders; as a qualification for their offices, they must have been admitted barristers, ~~or members~~ of one of the inns of court. All the city council must be feed, on behalf of one party or the other, before any foreign counsel, i. e. one not of their body can be admitted to plead in any cause or motion depending in this court.

Attorneys.

The *attorneys*, who have the privilege of practising here are likewise four in number; before an attorney can be admitted of this court he must first have been admitted an attorney of one of the courts in Westminster Hall, and have taken upon him the freedom of the
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the city. One of the attorneys of this court is employed in prosecuting, as well as in defending, every cause or proceeding instituted therein, and, where a foreign attorney is concerned in any cause depending here, the attorney of this court, retained by him, acts as his clerk in court, in like manner as the clerks in the Court of Chancery.

The Mayor's Court differs very materially from the Court of Hustings, and also from the Sheriffs' Courts, with respect to the days or times appointed for administering justice therein; in those courts particular days in each week are set apart, upon which, and no other, they can be held for the dispatch of business, but, for that purpose, here, *every day* in the week (except Sunday) is alike, by reason whereof the *dies juridici* of

Dies juridici.

D 4 this

this court exceed the days of that description in the sheriffs' courts, nearly in a threefold degree, and gives to this court a decided advantage over those courts, in point of expedition and dispatch in its proceedings.

*Dies non
juridici.*

Notwithstanding, generally speaking, it may be said that *all days* (except Sundays) are *dies juridici* here, yet, in the course of a year (besides Sundays) are a considerable number of days upon which this court cannot be held, and which make up its *dies non juridici*. We will enumerate them as particularly as the causes which govern them will admit.

The *dies non* of this court happening in each year may be classed under three distinct heads, thus, *Dies non*,
certain

certain as well in number as to the time of the year they happen.—*Dies non*, certain in number, but uncertain as to the time of happening.—*Dies non* uncertain as well in number as to the time of happening. In this order we will set them forth.

1st. *Dies non* certain as well in number as to the time of the year they happen, are in

January.

All the days in this month till the 1st Monday after the 6th (the feast of the Epiphany).

25th. Conversion of Saint Paul.

30th. King Charles's Martyrdom.

February.

2d. Purification Virgin Mary.

24th. Saint Matthias.

March.

Mayor's Court.

March.

25th. Annunciation Blessed Virgin
Mary,

April.

25th. Saint Mark,

May.

1st. Saint Philip and Saint James.

29th. King Charles II'd Re-
storation,

June.

11th. Saint Barnabas,

24th. Nativity of Saint John Bap-
tist.

29th. Saint Peter.

July.

25th. Saint James.

Au-

Mayor's Court.

41

August.

1st.
to
24th. Saint Bartholomew, both
days inclusive, } Called
the Vaca-
tion of
August *.

* The business of this court is adjourned by proclamation in Guildhall for the vacations of August and Christmas *only*, and upon making such proclamations *apprenticiality* is always excepted, so that any matters relative thereto may be proceeded in as if the court had not been adjourned. The adjournment for the *August* vacation takes place on the 31st of *July*, unless that day happens to be a Sunday, then on the day preceding, and the court opens again on the 25th of August, if a court-day, if not, then on the next court-day after. The adjournment for the Christmas vacation takes place on the 16th of December, *O Sapientia*, and opens the first *Monday* after the 6th of *January*, the feast of the Epiphany, if a court day, if not, then on the next court day following. Any business of the court may be transacted on either adjournment-day prior to the proclamation of adjournment being made.

Sep-

Mayor's Court.

September.

- 2d. Fire of London.
 21st. Saint Matthew.
 29th. Saint Michael and all Angels.

October.

- 18th. Saint Luke.
 28th. Saint Simon and Saint Jude.

November.

- 1st. All Saints.
 2nd. All Souls.
 5th. Papists Conspiracy.
 30th. Saint Andrew.

December.

- 16th. O Sapientia,
 to
 Monday next after the 6th of Ja-
 nuary, the feast of the Epiphany.
 2nd. *Dies*
- Christmas
 vacation, {

2nd. *Dies non*, certain in number,
but uncertain as to the time of
happening.

Three days at Shrovetide; viz.

Shrove Monday,
Tuesday,
and

Ash Wednesday,

} Dies car-
nis privii.

} Dies
cinerum.

All the days in the week prece-
ding Easter Week.

All the days in Easter Week.

} Vacation
of Easter

Four days next following Rogation
Sunday; viz.

Monday,
Tuesday,
Wednesday,
and

} Days of
the Roga-
tion.

Thursday, being Ascension Day
or Holy Thursday.

All the days in Whitsun week.

} Vacation
of Pente-
coste.

3d. *Dies*

3d. *Dies non*, uncertain as well in number, as to the time of happening.

The days whereon are held Sessions of Gaol Delivery, &c. at the Old Bailey.

Courts of Common Council.

Sessions of the Peace for the Borough of Southwark, and

Courts of Conservancy, and

The days appointed by Royal Proclamation as days of public fast or thanksgiving.

Such are the vacations or *dies non* of this court, upon which a judgment cannot be signed, a rule entered or any other act done which requires, or is supposed to require, the order or interference of the judges of the court, except in the case of apprenticeship, as before observed; but on such days, as well as on a court day,

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an action or other proceeding may be commenced, and process thereupon issued and served, and the party may appear thereto, and such other business of the like nature may be transacted in this court upon the *dies non juridici* thereof as in the courts of *Westminster* during the vacations there.

The Mayor's Court can sit for the ^{Sittings.} trial of causes, hearing of motions, &c. *any day* being *dies juridicus*. When the sittings of this court, as heretofore, were usually confined to a particular day in the week, viz. *Tuesday*, the business of the suitors suffered great delay, for when the *Tuesday* in any week (as would frequently be the case) happened to be *dies non juridicus*, the court did not sit during that week. The present Recorder, *Sir John William Rose*, perceiving the impolicy of the above restriction, immediately

diately on his coming into office, signified his readiness to sit *any day* in the week being *dies juridicus*, and as often as the business of the court rendered it necessary, having due notice of his attendance being requisite ; which has given an opportunity for disposing of the business of the suitors to this court with uncommon dispatch.

Of the objects of its jurisdiction.

The Mayor's Court, as a court of civil judicature, possesses very extensive powers, for, exclusive of its equitable jurisdiction, it hath not only a concurrent authority with the courts of common law in Westminster hall over all actions of a civil nature, arising out of the common or general law of the land within its jurisdiction, but it holds pleas in a variety of cases of very considerable importance, arising out of *city customs* in exclusion of those courts. It also holds plea of penal actions

arising out of acts of Common Council, whereof the courts in Westminster Hall cannot take cognizance; all which powers it exercises by a primary original authority, and without any writ or mandate from a superior court.

The objects of the jurisdiction of this court as to matters cognizable therein, seem naturally to fall into the three divisions of Actions arising out of the *general or common law* of the land.—Actions, and other proceedings arising out of *city customs*.—Actions arising out of *acts of Common Council*; In this order we will consider them.

E

1st. Of

1st. Of Actions arising out of the
general or common law of the
land.

This court holds pleas between subject and subject of all personal actions for redress of civil injuries arising or committed within the city and liberties, whether founded upon contracts or torts, let the subject matter be of what amount in value, or to what extent it may, as actions of *debt, detinue, covenant, assumpsit*; and of actions of *Trespass vi et armis*, as Assault and Battery, False Imprisonment and Adultery, or trespass considered with reference to the *person*; and of actions of trespass with respect to *personal*
pro-

property; and of Ejectment* or trespass with reference to *real property*.

This court also holds plea of all actions of *trespass on the case*, as Slander, Malicious Prosecution or case considered with reference to the *person*;

* Inferior courts, in general, cannot hold plea in ejectment, and it is upon this principle that the Sheriffs' Courts in London are precluded from taking cognizance thereof, but, the Mayor's Court, hath holden plea of actions of trespass in ejectment, ever since that mode of trying titles to, or obtaining possession of lands and tenements came into use, and its right so to do hath never been doubted. The proceedings of this court upon such actions are, in principle, governed by the general law of land, and the cases thereupon decided in the courts of law in Westminster Hall; but, by the established rules of practice in this court, the end aimed at by such proceeding is more speedily attained here than in those courts, and at less expence.

as also of Trover, or case considered with reference to *personal property*, and trespass on the case, properly so called, which includes injuries to *real property*.

Proceed-
ings, the
nature
thereof.

The *proceedings* of the Mayor's Court on the before-mentioned actions, in order to ascertain either the law, or the fact arising thereout, are in principle the same as proceedings in like cases in the courts of law in Westminster Hall; and the decisions of those courts are rules by which this court is guided in similar proceedings; but the practice of the Mayor's Court, in bringing such proceedings to a determination, differs in many respects from the practice of the courts in Westminster Hall.

Pro-

Proceedings in this court are attended with little cost, and the *practice* thereupon is expeditious and simple; all *actions* in this court are instituted by bill original, commencing an action here, in the technical language of the court, is called "affirming a bill original;" such a bill contains only the names of the parties (plaintiff and defendant), a short specification of the cause of action, according to the nature thereof, as in trespass on the case, thus, "in a plea of trespass upon the case, to the damage of the said plaintiff, ten thousand pounds of lawful money of Great Britain," to which is added nominal pledges of prosecution, with the attorney's name prosecuting, and, where the proceeding is by arrest, then the sum sworn to.

Practice,
observa-
tions
thereon.

Action.

Compelling
appearance.

The defendant's *appearance* to an action in this court, be the proceeding by service of a copy of the process, or by arrest, is compelled, not by writ or warrant, but, in the former case, by service of a copy of the action, or bill original on plain paper, with a notice to appear written under the same: in the latter case he is arrested by the Serjeant at Mace, on having a note, containing the particulars of the action, delivered to him, signed by the plaintiff's attorney, and without any farther authority.

Bail.

The greatest part of the doctrine which relates to *bail*, recognized by the courts of law in Westminster Hall, may be said to be here unknown; bail to an action in this court, where the party is arrested, is taken by way of recognizance before
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the clerk of the bails, and is absolute in the first instance, and the clerk of the bails is responsible for their sufficiency. This mode of taking bail precludes all questions, arising upon what, in the courts in Westminster Hall, is called giving bail to the sheriff; as also in excepting, justifying, adding, &c. on bail put in above, and saves to the parties the expence attendant upon taking such steps, which is a great ease and advantage to the suitors of this court. When final judgment is obtained against a defendant, in an action in which bail has been put in, in this court, immediately after return of *non est inventus*, upon the process of execution issued against the principal, the bail becomes answerable, and execution may be awarded against them upon

their recognizance, without any *scire facias*, as in the courts above.

Pleadings. Declarations, pleas, and other the *pleadings* of parties litigant, are not here filed, or delivered, entered upon paper, but the same are in the first instance copied upon a roll of parchment, called the Record, which, from time to time, in the different stages of a proceeding, is handed over by the attorney of one party to that of his adversary, that the pleadings of each party may be entered thereupon, until the cause is at issue.

Rules to plead.

After a plaintiff has declared, *rules to plead*, &c. &c. &c. are entered upon the margin of the record above-mentioned, and are served on the attorney of the adverse party by a delivery over to him of the record for the purpose

pose of entering the plea, or other subsequent pleading thereupon.

In assessing damages on judgements by default, *writs of enquiry* are not necessary here, the cause wherein such a judgement has been signed, is set down as of course, with contested causes, and the damages are assessed in court by the same jury as are summoned for trial of those causes.

Writs of inquiry.

For enforcing the attendance of Jury, *jurors* on this court, the writs of *venire and distringas* are not used. By custom altered and amended by several acts of Common Council, the Alderman of each ward returns annually on the back of his wardmote indenture, the names of a certain number of persons, residing in his ward,

ward, to serve the office of jurors for a particular month in the year, and the persons so returned are bound to serve this office in all causes tried in the Mayor's or Sheriffs' Courts, during that month, which renders the writs of *venire* and *distringas* unnecessary.

Verdicts.
Judg-
ments.

The Entry of a *verdict*, *judgement*, &c. is made upon the roll of parchment called the Record, whereupon has been entered the pleadings of the parties; and, after a proceeding is ended, this roll is filed amongst the records of the courts, as a memorial of the proceeding which it contains.

Execu-
tions.

On *executions* issuing out of this court the officer executing the same has not any claim to poundage or levy money; he is intitled only to such
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sum as, according to the nature of the case, shall be deemed a reasonable compensation for his trouble, &c.

2dly. Of actions and other proceedings arising out of *city customs*.

This court holdeth pleas in a variety of cases, arising out of city customs, of which the courts in Westminster Hall cannot take cognizance, the most essential whereof, and that which most concerns the public, is, the proceeding upon the custom appertaining to this city called the custom of *foreign attachment*.

Foreign
attach-
ment.

By this customary proceeding a creditor may attach in the hands of a third person, in the city of London,
in

in such proceeding called the garnishee, the moneys or goods of his debtor, in order to compel him (the debtor) to appear, and answer his (the creditor's) demand; and, in default of his appearance, the property attached is, by the judgement of the court, condemned and ordered to be paid or delivered over to the creditor, or person attaching, in satisfaction of his debt, or so far as the same will extend to pay.

Although it seems unnecessary, still we think it proper, here to observe, that, before a proceeding by foreign attachment is instituted, it should first be considered whether the property intended to be attached is subject to the custom; many decisions have taken place, as well in the courts in Westminster Hall as in the City Courts, which go to shew what pro-

property is or is not subject thereto, but the bounds prescribed to this work will not permit us to enumerate them here: however, there is a general rule, the principle whereof ariseth out of the common law of the land, which pervades every proceeding by foreign attachment, and will serve as a guide to shew what description of property is subject to this custom; the rule may be thus defined: If the property intended to be attached is so circumstanced, that the owner thereof could maintain his action of *debt* or *detinue* against the garnishee for the same, and, if withheld, *could not* legally enforce payment or delivery thereof by his own act, or by a summary or any other mode of proceeding *short* of an action at law, in general it may be concluded, that it is attachable by this custom; but this, like most general rules, hath its exceptions.

tions. Notwithstanding a garnishee *batb* in his possession the property attached, and the same *is* subject to the custom, yet, in most cases, in order to put the plaintiff, the person attaching, upon proof thereof, it is advisable for him to appear and plead the contrary, by means whereof, he, the garnishee has the opinion of the judge as to the law, and the verdict of a jury as to the facts arising out of his case, which is the best security he can have against any future claim of the property attached by the owner thereof.

Sequestra-
tion.

If any one deserts his house or warehouse, leaving his goods therein, the same may be *sequestered* by any person to whom he is indebted. This sequestration is grounded upon an action entered against the debtor, at the suit of the creditor, whereupon the house

or warehouse deserted, with the goods therein, are locked up, and, if the defendant doth not appear to the action within a limited time, the goods, by the judgements of the court, are appraised and delivered over to the plaintiff, in satisfaction of his debt, or so far as the same will extend to pay. If the goods are more than sufficient to discharge the debt, the judgement is for such part thereof as will answer that purpose.

Another proceeding, and which Bill of proof. always ariseth out of one of the two preceeding, of foreign attachment or sequestration, is, that by *Bill of Proof*, so called from the party who exhibits the same, thereby undertaking to prove the matters therein alleged to be true. It is a claim of property attached or sequestered, or
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an interest therein by some person not a party to the previous proceeding, who is called the Approver; upon this claim the plaintiff in the attachment or sequestration, and the approver, may plead to issue either upon the law or the facts arising thereout; the first, as is usual, is determined by the judge, the latter is tried by a jury. The bill of proof must be disposed of before any farther proceedings can be had upon the attachment or sequestration.

Arrests for
better se-
curity.

If a debtor gives his bond, or other obligation, for a debt contracted in the city, payable at a *future day*, and it is suspected that he intends to fly, or become fugitive, and withdraw his effects out of the city before the day, in order to avoid payment thereof, his body may be *arrested for better securing* the same. This proceeding is instituted

stituted upon an affidavit of the above facts, made by the plaintiff, or person to whom the obligation is given, confirmed by the oaths of four citizens, called his compurgators, who swear, that what he, the plaintiff, hath sworn, they believe to be true; upon which an action is entered in this court, and the arrest is made of course without any order of the court for that purpose; and, if the debtor is apprehended, he must either go to prison or find two sufficient sureties, who will undertake that he shall be forth coming on the day of payment, or that they will pay the debt for him.

By custom an action of *debt* may be maintained here, for money due upon *simple contract* without specialty, wherein the plaintiff counts upon a

Debt on
simple con-
tract.

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Con-

Confesset solvere, i. e. upon the grant and agreement of the defendant to pay without setting forth the special matter of such simple contract; and this action lies not only against the original debtor in his life-time, but also against his executor or administrator after his death. This court too, by custom, will sustain

Covenant without specialty.

an action of *covenant* without *specialty*, and a *surety*, having paid a debt for which he became jointly bound, may

Action by one surety against another for a contribution.

support an *action* here against his *co-surety* for a *contribution*, *ut uterque eorum oneretur pro rata*.

Actions for words.

In one particular case, by custom, this court will sustain an action for *words*, for which an action lieth not in any of the courts in Westminster Hall; as, if any one calls a woman a *whore*: for these words only, and without proving any damages suffered in consequence

sequence thereof, an action may be maintained in this court for the damages which it is supposed will ensue. These words are not actionable by the common law of the land; neither is the party speaking words of this description in the city of London, amenable to ecclesiastical censures. If a suit is instituted for such words so spoken, in the Spiritual Court, a prohibition may be had to stay proceedings; the city courts having, in such case, an exclusive jurisdiction. The reason given for this custom is, that in London whores are to suffer corporal punishment by carting and whipping, and that whoredom is an offence punishable by the wardmote inquest.

A married woman exercising a trade, wherein her husband doth not inter-

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meddle,

Actions by
and against
feme co-
vert, sole
traders.

meddle, may sue and be sued in this court as a *Feme Sole Merchant*: in such actions the husband is named for conformity, but the wife alone can be taken in execution.

Apprenti-
ciality.

If any cause subsists between a *master* and his *apprentice*, bound according to the custom of the city of London, which intitles the apprentice to his discharge, it is sued for by petition to this court; whereupon the parties may plead to issue, either upon the law or the facts arising thereout; the facts are tried by a jury, the Recorder decides the points of law.

The usual causes for which, by custom, an apprentice may be discharged, are: If the master neglects to inroll him within the first year of his

his apprenticeship; or for the following causes, notwithstanding he shall have been inrolled: If he was under the age of fourteen years at the time of binding.—If bound for a less time than seven years.—If his master shall give him unreasonable correction.—If his master do not provide him with sufficient meat, drink, and necessaries.—If his master turn him away, and refuse to receive him into his service again.—If his master leave off his trade, and do not provide him another master.—If the master dwells within the liberties of the city at the time the apprentice was bound, and afterwards removes out of the freedom.—Or if his master refuses to instruct him in his art or trade. The application for the discharge is always at the instance of the apprentice.

If an apprentice, bound according to the custom of the city, is guilty of a breach of any of the covenants contained in his indentures, he is subject to make reparation in damages by action, either in the courts at Westminster or the city courts, and notwithstanding he was under age at the time of binding; or if, whilst in his master's service, he demeans himself otherwise than as a good and dutiful servant, the chamberlain, on the master's application, will punish him by commitment to Bridewell.

Disfranchisement.

Disfranchisement, which may be said to be a proceeding of a criminal nature, is a power which this court possesses, by prescriptive right, of removing, or discharging, from the privileges and franchises of the city, a citizen, freeman, who shall have done an act, contrary to his duty as
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a citizen, which may tend to prejudice the public good of the city. The causes of disfranchisement are not precisely defined; some of them rest upon custom, to which others have been added by act of Common Council. By custom, if a person gains his freedom fraudulently, or violates his oath, or the duty of his office, as a freeman or member of the Corporation, he is liable to be disfranchised; and by act of Common Council, 18 Henry VIII. if a citizen takes an apprentice for a less time than seven years, or gives his apprentice wages, permits him to take part of his own getting or gains, suffers him to go at large, or serve a foreigner, or agrees for money or otherwise for his services, and afterwards procures such apprentice to be made free by servitude, both the master and apprentice may be disfranchised. The proceed-

ing of disfranchisement is instituted by way of information, on the relation of the Common Serjeant at law of the city, and the questions arising thereout, whether of law or of fact, are determined in the same manner as in the case of apprenticeship.

3dly. Of Actions arising out of
Acts of Common Council.

The Court of Common Council, pursuant to the power which it enjoys by prescriptive right, hath in many cases, made laws for the regulation of the trade, and good government of the City, and subjected the offenders against such laws to certain pecuniary penalties, which, in general, are directed to be sued for by action in this court,

The most material actions of this kind are the two founded upon the acts of

Common Council, made respectively the 15th of April, 4th James I. and 4th July, 11 Ann. The one for recovery of a penalty of 5l. imposed by the former act upon any one, *not being free of the City*, who shall shew, sell, or put to sale, any goods, wares, or merchandise, by retail, within the city or liberties; or who shall use any art, trade, mystery, or handicraft, there: the other for recovery of the like penalty imposed by the latter act upon any person, *being free of the city*, who shall set to work in any manual occupation or handicraft, within the city or liberties, any person being a foreigner or non-freeman. These actions are directed to be sued in the name of the Chamberlain of London, and are commonly called *Chamberlain's Actions*. The very existence of the Corporation may be said to be effected by these Actions,

in

For exercising a trade, not being free of the city.

Against freemen employing non free-men.

in as much as, from the dread or actual use thereof, a constant supply of fresh members is given to the Body Corporate, without which every Corporation aggregate would, in time, sink into oblivion.

For compelling a person to become free of a company, the trade whereof they exercise.

Similar to the last description of actions, are several others of a like nature, given by divers Acts of Common Council, on behalf of various incorporated companies, in order to compel persons exercising the trade of such companies to become members thereof.

Against persons exercising the feat of a tacklehouse, ticket, or street, porter, not being admitted of the society or fellowship.

The Court of Common Council hath made several acts, for regulating the tacklehouse, ticket, street, salt, and corn, porters, carmen, and other fellowships and societies; and for

for other purposes, and have subjected the offenders against such acts to pecuniary penalties, which are directed to be recovered by action in this court.

Penalties incurred by the collectors of the Orphan's Tax for a neglect of duty, are, by the acts of Common Council made for raising such tax, directed to be sued for in this Court.

For penalties forfeited by the collectors of the orphans tax.

After verdict against a *defendant*, either in the Mayor's or Sheriffs' Courts, he may, by what is called *marking his cause* before the Lord Mayor, stay judgement and execution; and if, upon hearing the parties by themselves or counsel, the case seems to require it, his Lordship can give time for payment of the recovery; or leave to file a Bill on the equity side of this Court,

Of marking causes before the Lord Mayor after verdict.

Court, to be relieved against the verdict at law; but these indulgences are always granted upon certain conditions; the first, viz. time for payment of the recovery, generally upon paying the costs in fourteen days, and giving security by bond to pay the recovery according to his Lordship's order; and the latter, leave to file a bill, usually on bringing the recovery into court, and giving security in bond in fourteen days, to pay the costs of the suit at law, and in equity, in case the bill be dismissed; but his Lordship may impose such farther or other terms, as, according to the nature of the case, he shall think equitable.

It is also said, that, if it appears that the plaintiff has obtained a verdict for more than is due, his Lordship has power to remit the cause to judgement
for

for the just debt only. This part of the custom seems repugnant to the common law of the land, as it tends to render nugatory the verdicts of juries.

On verdicts in this Court, where the plaintiff is intitled to judgement and execution the next court-day after the verdict is given, which is generally the following day, we think his Lordship's power to stay judgement by markment, might, in many cases, be very properly exercised, for the purpose of giving the defendant an opportunity of moving the court in arrest of judgement, or for a new trial *; but

* It has been held by the courts in Westminster Hall, that an inferior court cannot grant a new trial *where the cause has been fully heard*. This court,

but it should be used with caution, as it is subject to great abuse. It seems proper that the judge, before whom a cause is tried, should be present at the hearing which takes place upon the markment of such cause.

Its judgements
where reviewed.

The *judgements* of the Mayor's Court cannot be removed by writ of error into any of the courts of Westminster Hall; they are reviewed in the same manner as judgements given in the Court of Hustings *, i. e.

court, as well in this case as with respect to holding plea of actions of trespass in ejectment, differs from inferior courts in general; for, notwithstanding a cause may have been fully heard here, yet, for the like reasons which prevail in similar cases in the courts in Westminster Hall, this court is competent to grant a new trial; and it has exercised this power in numberless instances, as appears from the records of the Court.

* See before, p. 27.

by

by Commissioners appointed under the Great Seal, and the appeal from their determinations is immediately to the House of Peers, which is the last resort, and from whose determinations no appeal lies.

In the Mayor's Court are certified City Seal.
under the *Seal of the office of*
Mayoralty commonly called the
City Seal, *Affidavits* verifying the execution of deeds, wills, and other writings affecting lands, &c. in the *West India Islands*, and other his Majesties colonies and plantations in *America*, to the end that they may be registered in such islands or places, and for other purposes; and also *affidavits*, authenticating proofs, the execution of powers of attorney, &c. for the recovery of debts, &c. in the above, and other foreign places. The Seal
is

is had upon application to *any* one of the Attorneys of this Court, at their office over the Royal Exchange. The charge for a City Seal, where the affidavit of one deponent only is certified is £.1 1s. if more than one, a farther 6s. 8d. for every additional deponent, out of which the attorney employed is entitled to a small fee for the certificate, and his trouble in procuring the Seal to be affixed thereto.

OF

OF THE MAYOR'S COURT IN EQUITY.

IT hath before been observed, that the Mayor's Court is of double capacity, possessing an equitable as well as a legal jurisdiction; having finished our treatise so far as relates to the ordinary or legal jurisdiction of the court, we shall now proceed to consider its extraordinary or equitable one.

Whatever we have before stated relative to the *name, constitution*, and to the *judges, officers, counsel*, and *attorneys*, of the Mayor's Court, or of the *times appointed for administering justice therein*, applies equally to both divisions of the court, therefore it is unnecessary here again to repeat what we have said con-

G

cerning

cerning these matters, referring our readers thereto, we will immediately proceed to observe on the objects of the jurisdiction of the equity side of the court.

Matters.
cognizable
therein.

Fraud,
Trust,
Accident,
Account,
&c.

Enforcing
perform-
ance of
agree-
ments.
&c.

Decreeing
for closure
or redemp-
tion of
mortgages.
&c.

The Mayor's Court in Equity takes cognizance of all common cases of an equitable nature, between party and party, arising within the city and liberties, as all those founded upon *fraud, trust, accident, or matter of account*. It likewise gives relief in all matters relative to *portions, powers, devises, legacies, executors, and administrators*. It can enforce the *specific performance* of an *agreement*, decree the *redemption* or *foreclosure* of a *mortgage* of lands and tenements, in the city and liberties. A party may be here *relieved against an unreasonable agreement, or an agreement without*

con-

consideration, and this court will *reverse* an *arbitrement* made pursuant to an order of the court, or confirm it in part and reverse it in part. In the above, and all other ordinary cases of equity arising within the city, be the application immediately for relief by the decree of the court, or for a discovery only in order to seek relief at law, this court hath a concurrent jurisdiction with the courts of equity in Westminster Hall.

In some cases which arise out of city customs, this court hath jurisdiction in exclusion of the courts of equity in Westminster Hall; as where an apprentice bound according to the custom of the city, is discharged from his master before the expiration of his apprenticeship, he can sue here

Restitu-
tion
of an ap-
prentice
fee.

only for *restitution* of such part of his *apprentice fee* as by custom he is entitled to.

Compelling a discovery of the nature and amount of property attached.

Another case, well worthy of attention, and which gives to the Mayor's Court a decided advantage over the other city courts in the proceeding by foreign attachment, is, the power which it possesses in its equitable capacity of compelling the *garnishee* on a bill filed against him for that purpose, by the plaintiff in attachment, to *discover* upon oath (the only facts necessary to be proved on the trial of an attachment) the *nature* and *amount* of the *property attached*, whose answer to such bill is evidence against himself to prove the above facts. The Sheriffs' Courts,

being without any equitable jurisdiction, cannot render to a party the like aid; if the garnishee's own evidence is necessary to enable the plaintiff to proceed with effect in an attachment depending in either of those courts, it may be had on removing the attachment into the Mayor's Court, in like manner, and with the same effect, as if the same had been first instituted there.

A party, having equitable cause, may here be relieved against an action, foreign attachment, or other *proceeding* on the law side of the Court, or in the Sheriff's Courts, either before or after judgement; and the bill exhibited for that purpose, from the time of filing thereof, operates as an injunction to stay all proceedings at law; but if the action or proceeding at law, wherein relief is sought, be in

Giving
relief
against
proceed-
ings at
law.

Directing
trial of
issues.

either of the Sheriff's Courts, the same must be removed into the Mayor's Court, before the party will be intitled to relief from the equitable jurisdiction of that court. And for ascertaining a fact arising out of a cause depending on the equity side of the court, it can *direct* the *trial of an issue* on the law side thereof.

Proceed-
ings, how
instituted,
and the
nature
thereof.

All causes on the equity side of the Mayor's Court, as in Chancery, are instituted by English Bill, which is in the nature of a petition to the Lord Mayor and Aldermen, and so far as relates to principles, the *proceedings* therein are the same as proceedings in similar cases in the courts of equity in Westminster Hall, and this court, in its decisions upon points arising out of such proceedings,
and

and forming decrees thereupon, is bound by same rules of equity as are observed by those courts. But the practice of this court upon such proceedings differs materially from the practice of the courts of equity in Westminster Hall: proceedings in this court are brought much earlier to a determination, and the cost attending the same, comparatively speaking, is trivial.

Matters of *account*, such as are in the Court of Equity in Chancery referred to the masters of that court, to enquire into and report upon, are here, for that purpose, occasionally referred to some of the city pleaders, but generally to the attorneys of the court, not concerned in the cause to which the same relate.

Matters of
account
how
settled.

Its decrees
where ap-
pealed
against.

The *appeal* against the decrees made on the equity side of this court, as against those made on the equity side of the Court of Exchequer, is immediately to the House of Lords. It has been doubted whether a bill of appeal lies hence to the Court of Equity in Chancery; cases have occurred in that court wherein this point has been questioned, but it does not appear that a decision has ever been had thereupon; however, the general received opinion is, that no such bill will lie, and that the House of Peers is the only tribunal which hath power to examine the decrees of this court.

OF THE SHERIFFS' COURTS*.

EACH Sheriff of this city hath a ^{Name.} court, which is said to be held before him at his Compter. These courts form two distinct independent judicatures, but as they so nearly agree in every point upon which we shall have occasion here to speak, they will both be treated of under one head.

The constitution of the Sheriffs' ^{Constitu-} Courts is founded upon custom; they ^{tion.} are courts of record from long usage. For hearing of causes, &c. they both sit in Guildhall. The Sheriffs' ^{Where} Courts take cognizance of all mat- ^{held.} ters pleadable therein by virtue of ^{Nature.}

* For the origin of these courts see p. 6, 7.

Rank.

a primary original authority; they have not, like the Mayor's Court, an equitable jurisdiction; all their proceedings are conformable to the strict rules of law. They are inferior to the Mayor's Court; and actions, attachments, &c. instituted therein, may, by either party, be removed into the Mayor's Court, at any time before the jury is sworn for trial thereof, by a process called a *Levetur Querela*, which is signed by the Lord Mayor or the Recorder, and from the delivery thereof at the Compter, where the cause or other matter is depending, operates as an injunction to stay all proceedings below.

Judges.

The court of each Sheriff has its own Judge, appointed to his office by the Court of Aldermen. It is required of the persons filling these offices, that
previous

previous to their appointment thereto they should be utter barristers; i. e. barristers of three years standing.

To the court or compter of each Sheriff belong certain subordinate officers, admitted to their offices by the Court of Alderman, as a Clerk of the Papey, four Clerk Sitters, and a Prothonotary; to each description where-
OFFICERS.
Clerk of the papers.
Clerk sitters.
Prothonotary.
of there are assigned particular duties, in bringing causes instituted in their respective courts to an issue, in recording verdicts, entering up judgments, and awarding executions, thereupon.

The process of the Sheriff's Courts is served, and their orders and judgments are enforced, by the *Serjeants at Mace* of the Sheriffs, who are admitted to their offices by the Court of Aldermen.
Serjeants at mace.

The

Counsel.

The Counsel, or Advocates, who practise here, are the four City Pleaders. They have the same privileges relative to practising in these courts as in the Mayor's Court.

Attorney.

These courts have their own attorneys for conducting the business of the suitors; they are six in number, and admitted to their offices by the Court of Aldermen. The whole of them, after admission, are at liberty to practise in either court.

Dies juridici.

The *dies juridici* of one Sheriff's Court, are entirely distinct from those of the other, they are as follow:

| | | |
|---------------------|-------------------------------|---------------|
| For the Court held | } <i>Wednesday and Friday</i> | in each week. |
| at Giltspur-street, | | |
| Compter, | | |

For

Sheriffs' Courts.

91

For the Court held } *Thursday* and *Sa-*
 at the *Poultry* } *turday* in each
 Compter, } week.

On such days, and no other, these courts respectively set for the dispatch of business, and which may be called the general *dies juridici* of the Sheriffs' Courts; yet there are several of these days in the course of a year, upon which they cannot be held, and which constitute their *dies non juridici*, as

Ash Wednesday.

The *Wednesdays*,
Thursdays, *Fri-* } In *Passion* and
days, and *Satur-* } *Easter Weeks.*
days,

Wednesday and } In *Rogation*
Thursday, } *Week.*

Wed-

Sheriffs' Courts.

Wednesday, Thursday, Friday, and Saturday, } In Whitfun Week.

The *Wednesdays, Thursdays, Fridays, and Saturdays,* } Between the 1st of *August* and the first court day after the *fire of London*.

The *Wednesdays, Thursdays, Fridays, and Saturdays,* } Between the *Saturday* before *St. Thomas's Day* and *Wednesday* after *Plow Monday*.

There are likewise in the course of a year certain *feasts, fasts, &c.* on which, if they happen to fall upon any of the days denominated the general *dies iudicii* of these courts, for that reason, they cannot be held; as,

The

The *feasts or holidays*, and *fasts or thanksgiving days*, particularly mentioned in the first class of the *dies non* in the Mayor's Court. And

The *feasts or thanksgiving days* appointed by royal proclamation.

The objects of the jurisdiction of both the Sheriffs' courts are the same; it will be unnecessary here particularly to enumerate them, as a general reference to what we have stated in treating of the objects of the jurisdiction of the law side of the Mayor's Court will fully answer that purpose.

Matters.
cognizable
therein.

The actions, and other matters cognizable in these courts, as in the Mayor's Court, fall into the threefold division of—Actions arising out of the *common or general law of the land*;—
Actions,

Sheriffs' Courts.

Actions, and other proceedings, arising out of *city customs*;—Actions arising out of acts of *Common Council*.

1st. Of Actions arising out of the *common or general Law of the Land*.

The same description of actions that are contained under this title as cognizable in the Mayor's Court are likewise cognizable here, except *ejectment*, in which case the Sheriffs' Courts cannot hold plea.

2dly. Of Actions arising out of *City Customs*.

The Sheriffs' Courts have the like power as the Mayor's Court, in all cases

cases arising out of *city customs*, except in those of *apprenticiality* and *disfranchisement*, which appertain exclusively to the Mayor's Court.

3dly. Of actions arising out of Acts of *Common Council*.

The jurisdiction of the Sheriffs' Courts as to actions arising out of acts of *Common Council*, is nearly the same as that of the Mayor's Court; the action for recovery of the penalty imposed by the act of *Common Council*, 4th James I. upon persons *not being free of the city*, who shall shew, sell, or put to sale, any goods, wares, or merchandise, by retail, or who shall use any art, trade, or handicraft, therein, excepted.

H

All

Nature of
their pro-
ceedings.

All actions in the Sheriffs' Courts are commenced by plaint or complaint against the party sued, commencing an action there, in the technical language of the courts is called, "levying a plaint." Proceedings in actions in the Sheriffs' Courts, where the cause thereof arises out of the general law of the land, are in principle the same as proceedings in like cases in the courts of law in Westminster Hall; but the Sheriffs' Courts vary from the courts of Westminster Hall, as also from the Mayor's Court, in their practice upon such proceedings.

Staying
judge-
ments by
markment.

After verdict against a defendant in either of the Sheriffs' Courts, judgement may be stayed by marking the cause before the Lord Mayor, and, if the case requires it, he can give time for payment of the recovery, or leave to

file a bill for relief against the verdict, on the equity side of the Mayor's Court*.

Error, as before observed, lies hence to the Husting of Common Pleas, where the judgements of these courts are examined, and affirmed or reversed; the judgements of the Husting of Common Pleas are reviewed by the Commission Court, or Court of Delegates, and their determinations are examined by the Court of Peers, from whose judgements no farther appeal is permitted, as they are in all cases the dernier resort, and to their determinations every subordinate tribunal must submit†.

Judge-
ments how
reviewed.

Besides the courts of which we have here treated, there are, by custom, be-

* See p. 73, 74, 75, 76.

† See p. 22, 23.

longing

Sheriffs' Court.

longing to the city of London, divers other courts, through which a farther part of her judicial franchise may be said to be exercised; as, the *Court of the Chamberlain*, the *Court of Conservancy* of the river Thames, the *Coroner and Escheator's Courts*; and, by Act of Parliament, the city hath her *Court of Requests or Conscience*; but, these being all courts of an especial jurisdiction, they form no part of that branch of the city's judicial franchise, which is the subject of this treatise.

FINIS.

A
T A B L E
OF THE
PRINCIPAL MATTERS.

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| | |
|---|-------------------|
| ORIGIN. | 1, 3, 4, 5, 6, 7. |
| NAME. | 1. |
| CONSTITUTION. | 1, 2. |
| RANK. | 2. |
| ANTIQUITY. | 2. |
| PLACE where held. | 2. |
| DIVISIONS. | 2. |
| TITLES. | 2, 3. |
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| JUDGES. | 7. |
| number constituting a court. | 8. |
| OFFICERS. | 8. |
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| | 1 clerk |

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